

Internal Revenue Service  
**memorandum**

date: NOV 06 1991

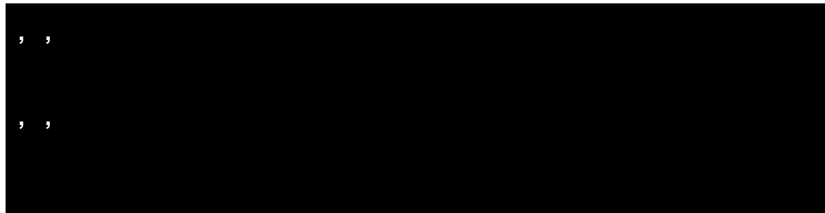
to: Director, Internal Revenue Service Center  
Kansas City, MO  
Attn: Entity Control

from: Technical Assistant  
Employee Benefits and Exempt Organizations

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subject: CC:EE:3 - TR-45-1534-91  
Railroad Retirement Tax Act Status

Attached for your information and appropriate action is a copy of a letter from the Railroad Retirement Board concerning the status under the Railroad Retirement Act and the Railroad Unemployment Tax Act of:



We have reviewed the opinion of the Railroad Retirement Board and, based solely upon the information submitted, concur in the conclusion that the [REDACTED] a trustee, may administratively be established as an employer for purposes of filing any reports required under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

(Signed) Ronald L. Moore

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RONALD L. MOORE

Attachment:

Copy of letter from Railroad Retirement Board

cc: Mr. Gary Kuper  
Internal Revenue Service  
200 South Hanley  
Clayton, MO 63105

08683

UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
844 RUSH STREET  
CHICAGO, ILLINOIS 60611

BUREAU OF LAW

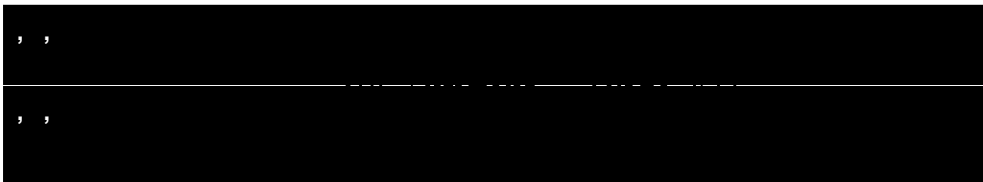
AUG 28 1991

Assistant Chief Counsel  
(Employee Benefits and  
Exempt Organizations)  
Internal Revenue Service  
1111 Constitution Avenue., N.W.  
Washington, D.C. 20224

Attention: CC:IND:1:3

Dear Sir:

In accordance with the coordination procedure established between the Internal Revenue Service and this Board, I am enclosing for your information a copy of an opinion in which I have expressed my determination as to the status under the Railroad Retirement and Railroad Unemployment Insurance Acts of the following:



Sincerely yours,

A handwritten signature in cursive script, which appears to read "Steve Bartholow", is written over the typed name.

Steven A. Bartholow  
Deputy General Counsel

Enclosure

0284B

UNITED STATES GOVERNMENT

RAILROAD RETIREMENT BOARD

**MEMORANDUM**

L - [REDACTED]

AUG 14 1991

TO: Director of Research and Employment Accounts

FROM: Deputy General Counsel

SUBJECT: [REDACTED] Productivity  
Fund  
Employer Status

This is in response to your Form G-215 of November 14, 1990, requesting my opinion regarding the employer status of the Trustee of the above reference trust fund under the Railroad Retirement and Railroad Unemployment Insurance Acts.

The [REDACTED] and the [REDACTED] have entered into agreement covering all employees engaged in train service. Commencing [REDACTED], for each tour of duty that operates with a reduced crew the railroad will pay into a trust fund \$ [REDACTED]. The trust fund is to be administered by [REDACTED] (Trustee). The Trustee is governed by a trust agreement under which the trustee shall invest all amounts contributed pursuant to the agreement and make payments from the trust to employees affected by the agreement pursuant to the terms of the agreement. The trust agreement provides that the Trustee will be responsible for all required withholdings from the trust distributions and will keep all accounts relating to the investments receipts disbursements and other transactions regarding the trust. The Trustee shall be paid such compensation as from time to time agreed upon between the Union, the Railroad and the Trustee. This compensation and the expenses incurred by the Trustee as well as any taxes levied upon the trust, shall be paid from the trust income and to the extent necessary from the corpus of the trust. As of [REDACTED], the Trustee was being paid a \$ [REDACTED] annual maintenance fee and [REDACTED]% of earnings from investments.

In Legal Opinions L- [REDACTED] and L- [REDACTED] I indicated that payments from a productivity trust fund similar to the one in question with compensation under the RRA and RUIA. However, in L- [REDACTED] I held that the Trustee of such a trust fund was not an employer under the Acts but merely acting as an agent for the employer making contributions into the trust fund. However, in that

Director of Research and Employment Accounts

opinion I also recognized that for employment tax purposes a Trustee who has control of the wages and who is responsible for their payment may be considered an employer with respect to the proper withholding and payment of employment taxes. See section 3505(a) of the Internal Revenue Code.

Consequently, administratively you may establish the Trustee of the trust fund as an employer for purposes of filing any reports required under the RRA and RUIA. This may be beneficial particularly in the case in which the Trustee is filing a CT-1 separate from that of the railroad. However, I certainly would have no objection if you required the railroad simply to report any payments made by the Trustee as a part of its reporting requirement.

Distributions from the trust take place in December of a calendar year and relate to contributions made for the fiscal year ending October 31 of that same year. Such payments should be treated as subject to section 211.11 of our regulations (20 CFR 211.11 (1990)) (Retroactive Wage Increase), that is, they are creditable when paid with the option, exercisable by the employee, to have them credited when earned if it is possible to show when they were earned.

An appropriate Form G-215 is attached.



Steven A. Bartholow

Attachment

RLSimmons:cmw  
03180/C. 2893-90